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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/923,949	08/08/2001	Kazuhiro Shimura	P100158-00040	2066

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RADER FISHMAN & GRAUER PLLC  
LION BUILDING  
1233 20TH STREET N.W., SUITE 501  
WASHINGTON, DC 20036

EXAMINER
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MAKI, STEVEN D

ART UNIT	PAPER NUMBER
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1733

DATE MAILED: 04/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application N .

09/923,949

Examiner

Steven D. Maki

Applicant(s)

SHIMURA, KAZUHIRO

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 4-23-03.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 7-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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1) The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2) The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

French

3) **Claims 1, 2, 4 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by French (RE 30518).**

As to claims 1, 2 and 5, the claimed pneumatic tire is anticipated by the pneumatic tire of French having mark portions in the tread as shown in figures 2-4. The claimed mark portion reads on the one of the slots (thin grooves) 6. The slots 6 are adjacent to main grooves 5 and are for indicating wear. The shape of the wear indicating slots 6 changes with wear. For example, one of the slots 6 has the shape of an "I" at the tread surface and has the shape of a "T" at the bottom of the slot. Also, the

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width of the slot at the "T" location (which is determined by wire / rod 9) is wider than the width of the slot at the "I" location (which is determined by knife blade 8).

As to claim 4, note French's teaching at col. 3 lines 47-63 to replace the wires / rods with a colored strip of material.

German '833

4) **Claims 1, 2, 5 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by German '833 (DE 362833).**

German '833 discloses a pneumatic tire having a tread comprising blocks 2 separated by grooves 3 and a wear indicator. The wear indicator comprises a slot 4 whose base 5 is inclined at an angle of about 40 degrees and can be provided with markings to indicate the amount of wear in the tire tread before the legal limit is reached.

As to claim 1, the claimed mark portion reads on the wear indicating slot 4 of German '833. The cross section shape of the wear indicating slot 4 changes as wear progresses since the inclined base 5 causes the wear indicating slot 4 to become longer as wear progresses. It is noted that the original disclosure describes changing a surface shape as including a change in length of a thin groove.

As to claim 2, the slot 5 of German '833 is a "thin groove" ("thin" is a relative term which fails to define a width different from that disclosed by German '833).

As to claim 5, the claimed main groove reads on groove 3 of German '833.

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As to claim 6, note the shape of the wear indicating slot 4 shown in figure 1. The description of the two pairs of sides does not appear to require structure different from that shown by German '833.

**5) Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over German '833 (DE 362833) in view of Bins (US 3833040).**

As to claim 3, it would have been obvious to one of ordinary skill in the art to color the wall surfaces of the slot (thin groove) of German '833 with a different color than that of surrounding rubber since Bins, directed to indicating wear of a tire tread, suggests coloring groove walls with a layer of colored material so that when the color wears off, the user knows that the tread / tire should be replaced.

**6) Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over German '833 (DE 362833) in view of French (Re 30518) and/or Trechot (FR 1498340).**

As to claim 4, it would have been obvious to one of ordinary skill in the art to bury a colored member of a different color from that of the surrounding rubber in the wear indicating slot 4 of German '833 since (a) French suggests locating a strip of colored material at the bottom of a wear indicating slot in order to facilitate observation of a wear indicating warning and/or (b) Trechot suggests locating a colored indicator at the bottom of a groove in order to facilitate visual monitoring of the degree of wear of the tire.

**7) Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over German '833 (DE 362833) in view of Europe '113 (EP 250113), Eromaki (US 6523586) or Japan '608 (JP 55-110608).**

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As to claim 6, it would have been obvious to one of ordinary skill in the art to locate the wear indicating slot 4 of German '833 completely in the block (a land portion) so as to be isolated from the main grooves and thereby define two pair of sides as claimed in view of Europe '113, Eromaki or Japan '608's teaching to locate a wear indicating groove, sipe or recess respectively completely in a land portion so as to be an isolated from the main grooves.

#### Remarks

8) Applicant's election with traverse of Group I claims 1-6 in Paper No. 5 is acknowledged. The traversal is on the ground(s) that a thorough search of one group necessarily encompasses a search for the remaining group. This is not found persuasive because the search for the non-elected group (the measuring method) requires a search for the step of the subject matter of "detecting image data of said mark portion of said pneumatic tire with optical detecting means", but the search for the elected group (the tire) does not require a search for the above noted step.

The requirement is still deemed proper and is therefore made FINAL.

The remaining references are cited of interest.

9) No claim is allowed.

10) Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven D. Maki whose telephone number is 703-308-2068. The examiner can normally be reached on Mon. - Fri. 7:30 AM - 4:00 PM.

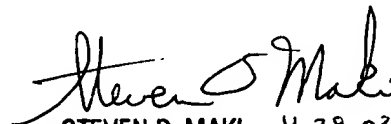
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Ball can be reached on (703) 308-2058. The fax phone numbers

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for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Steven D. Maki  
April 28, 2003

  
STEVEN D. MAKI 4-28-03  
PRIMARY EXAMINER  
~~GROUP 1300~~  
1733